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9 **UNITED STATES DISTRICT COURT**
10 **DISTRICT OF NEVADA**

11 UNITED STATES OF AMERICA,

12 Plaintiff,

13 v.

14 DERRICK ANTHONY WOODFIN,

15 Defendant.
16

Case No. 2:14-cr-410-GMN-VCF

AMENDED EMERGENCY MOTION
FOR THE PRODUCTION OF
CHRONOLOGIES

(Expedited Treatment Requested)

17 The defendant, Derrick Anthony Woodfin, by and through his counsel, Brian Pugh,
18 Assistant Federal Public Defender, files this Amended Emergency Motion for Production of
19 Chronologies. This Motion is based upon the Due Process Clause of the Fifth Amendment,
20 *Brady v. Maryland*, 373 U.S. 83 (1963), Federal Rules of Criminal Procedure 26.2 and
21 32.1(b)(2)(B), the following Points and Authorities, and all filings to date.
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1 These documents are necessary for Mr. Woodfin's revocation hearing, scheduled for
2 September 7, 2017.

3 DATED this 6th day of September, 2017.

4 RENE L. VALLADARES
5 Federal Public Defender

6 By: /s/ Brian Pugh
7 BRIAN PUGH
8 Assistant Federal Public Defender
9 Attorney for Derrick Woodfin
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1 **Points and Authorities**

2 **Statement of Facts**

3 On October 26, 2016, the United States Probation Office (“Probation”) filed a petition
4 to revoke Mr. Woodfin’s supervised release for six alleged violations (“Petition”). ECF No.
5 156.

6 The Petition’s first violation alleges that Mr. Woodfin tested positive for controlled
7 substances on three occasions, August 11, 2016, September 1, 2016, and September 28, 2016.
8 ECF No. 156 at pp. 2-3. Probation alleges that on August 11, 2016, Mr. “Woodfin denied
9 willfully ingesting the illicit substance.” ECF No. 156 at p. 2. Probation alleges that on
10 September 1, 2016, Mr. “Woodfin admitted to smoking the illicit substance.” *Id.* Probation
11 also alleges that Mr. Woodfin failed to appear for drug testing on three dates. ECF No. 156 at
12 p. 3. Probation also used the allegation that Mr. Woodfin failed to appear for three drug tests
13 as partial basis for alleged violation number five for failure to follow instructions. ECF No.
14 156 at p. 4.

15 The Petition’s second violation alleges that Mr. Woodfin moved numerous times to
16 various hotels without notifying probation of his room number within the required time frame
17 and his current residence was unknown. ECF No. 156 at p. 3. Probation also used the allegation
18 that Mr. Woodfin failed to provide his room number to probation as partial basis for alleged
19 violation number five, failure to follow instructions and six, permit probation officer visit
20 anytime. ECF No. 156 at pp. 4-5.

21 The Petition’s third violation alleges that Mr. Woodfin never participated in substance
22 abuse treatment as required. ECF No. 156 at p. 3. Probation also used the allegation that Mr.
23 Woodfin failed to participate in substance abuse treatment as partial basis for alleged violation
24 number five for failure to follow instructions. ECF No. 156 at p. 4.

1 The Petition's fourth violation alleges that Mr. Woodfin failed to attend mental health
2 counseling as required. *Id.* Specifically, the Petition alleges that on three occasions, July 30,
3 2016, August 6, 2016, and August 8, 2016, Mr. Woodfin failed to attend treatment. *Id.* The
4 Petition also alleges that on August 10, 2016, Mr. Woodfin arrived for his treatment two and a
5 half hours early and then refused to stay for treatment due to a disagreement over whether the
6 bus route would be available to take him home after his treatment. ECF No. 156 at p. 4. The
7 Petition also alleges that on August 11, 2016, Mr. Woodfin was rude over the telephone to the
8 treatment center's staff. *Id.* The Petition also alleges that in August 2016, Mr. Woodfin advised
9 probation that he began receiving mental health services from Kaiser Permanente Hospital, but
10 failed to provide probation proof to verify his participation in the treatment. *Id.* Probation also
11 used the allegation that Mr. Woodfin's failure to provide proof of his participation in the Kaiser
12 Permanente Hospital program as partial basis for alleged violation number five for failure to
13 follow instructions. *Id.*

14 Probation should have chronology entries that document the probation officer's
15 conversation(s) with service providers, others in Probation, and Mr. Woodfin about Mr.
16 Woodfin's alleged failures to appear for drug testing and treatment. Further, Probation should
17 also have chronology entries about the alleged failure to provide room numbers, failure to
18 appear for mental health treatment, and failure to provide documentation of his participation in
19 the Kaiser Permanente Hospital mental health services. Furthermore, Probation should have
20 chronology entries that document the probation officer's instruction to Mr. Woodfin about each
21 of these allegations.

22 Mr. Woodfin, therefore, respectfully requests this Court order Probation to provide
23 defense counsel with any and all chronologies regarding Probation's communications with
24 service providers, others in Probation, and Mr. Woodfin regarding his alleged violations.

Argument

In *Morrissey v. Brewer*, 408 U.S. 471, 484-90 (1972), the Supreme Court defined certain due process requirements that apply to parole revocation proceedings. Shortly thereafter, the Court extended these right to probation revocations. See *Gagnon v. Scarpelli* 411 U.S. 778, 782 (1973). Federal Rule of Criminal Procedure 32.1 extends these protections to supervised release violations. See *United States v. Martin*, 984 F.2d 308, 310 (9th Cir. 1993). Rule 32.1 broadly provides that “[t]he person [subject to a revocation hearing] is entitled to . . . disclosure of the evidence against the person.” Fed. R. Crim. P. 32.1(b)(2)(B). This applies whether that information is in Probation or the government’s possession.

Further, the Government is obligated to provide *Brady* materials in supervised release proceedings. See *United States v. Quiroz*, 374 F.3d 682, 684 (8th Cir. 2004)(analyzing whether a *Brady* violation occurred in supervised release proceeding); *United States v. Dixon*, 187 F. Supp. 2d 601, 602-05 (S.D.W.V. 2002) (granting defendant’s motion in supervised release hearing for production of *Brady* material pursuant to certain *in camera* procedures); *United States v. Ferrera*, No 89-289-MLW, 2008 WL 2222033, at *3 (D. Mass. May 23, 2008) (“The issuance of the summons [for supervised release violations] imposes certain obligations on the government . . . It must . . . provide to [defendant] all material exculpatory evidence or information that is in the possession of any federal, state or local enforcement agency that participated in the investigation of those alleged violations.”) (citing *Brady*, 373 U.S. at 87).

Additionally, pursuant to Federal Rule of Criminal Procedure 26.2, the government must produce any statement of the witness that is in their possession and relates to the subject matter of the witness’s testimony. This rule applies to hearings to revoke or modify supervised release under Rule 32.1(e). Fed. R. Crim. P. 26.2(g). Therefore, the government is obligated to disclose any prior written statements of a witness that they plan on calling at the upcoming revocation hearing. For judicial efficiency, defense counsel requests that the reports be

1 disclosed prior to the hearing to allow defense an opportunity to review them and conduct
2 follow-up investigation.

3 The chronologies about the probation officer's communications with service providers
4 about his failures to participate in their programs or missed meetings must be disclosed under
5 Fed. R. Crim. P. 32.1(b)(2)(B) because they constitute evidence against Mr. Woodfin.
6 Likewise, any chronology entries about drug testing or changing residence must be disclosed
7 under Fed. R. Crim. P. 32.1(b)(2)(B). Probation or the government must also produce the
8 requested chronologies, especially since they will be the subject of witness testimony at the
9 revocation hearing.

10 On August 31, 2017, pursuant to LCR 16-1(c) and D. Nev. LR 1A, the undersigned
11 requested discovery of numerous items from the government including chronologies. In
12 general, the government has been cooperative and responsive, however, the government
13 informed the undersigned that it would not turn over chronologies without a court order.
14 Therefore, the undersigned certifies that he made a good faith effort to resolve this discovery
15 dispute and requests the intervention of this Court to obtain the chronologies.

16 **Conclusion**

17 For the foregoing reasons, Mr. Woodfin respectfully requests this Court order Probation
18 to provide the requested documents immediately to allow counsel time to review the documents,
19 conduct any further investigation and prepare for the revocation hearing on September 7, 2017.

20 DATED this 6th day of September, 2017

21 Respectfully Submitted,

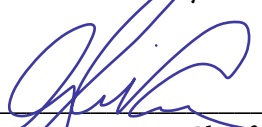
22 RENE L. VALLADARES
23 Federal Public Defender

24 By: /s/ Brian Pugh

BRIAN PUGH
Assistant Federal Public Defender
Attorney for Derrick Woodfin

25 **IT IS SO ORDERED.**

26 **DATED** this 6 day of September,
2017.



Gloria M. Navarro, Chief Judge
United States District Court

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